

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBY J. GATES and DEPARTMENT OF THE ARMY,
ENLISTED RECORDS BRANCH, Fort Benning, GA

*Docket No. 03-918; Submitted on the Record;
Issued July 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration, dated July 10, 2002, was untimely filed and did not present clear evidence of error.

On December 20, 1985 appellant, then a 55-year-old military personnel clerk, filed a claim for traumatic injury asserting that she sustained injuries when, while in the performance of duty, her legs suddenly gave out beneath her and she fell to the floor. Appellant stopped work on October 20, 1985 and has not returned. The Office accepted appellant's claim for low back strain and chronic low back syndrome.

In a decision dated June 16, 1994, following proper notice, the Office terminated appellant's entitlement to compensation benefits effective June 26, 1994, on the grounds that the accepted conditions had resolved.

By letters dated July 28, September 9, October 6 and November 25, 1994 and March 31 and July 3, 1995, appellant requested reconsideration of the Office's prior decision. In each instance, appellant submitted additional medical evidence in support of her request.

In merit decisions dated August 31, October 3 and November 16, 1994 and January 27, May 9 and September 13, 1995, the Office found the evidence submitted in support of appellant's reconsideration requests to be insufficient to warrant modification of the prior decision.

By letter dated July 10, 2002 and received by the Office on July 24, 2002, appellant again requested reconsideration of the Office's prior decision.

In a decision dated September 27, 2002, the Office found that appellant's July 10, 2002 letter was an untimely request for reconsideration, and that appellant had not shown clear evidence of error.

The Board finds that the Office properly determined that appellant's request for reconsideration, dated July 10, 2002, was untimely filed and did not present clear evidence of error.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.¹ The Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.² When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.³ Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁴

In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.⁵ In this case, the Office issued its last merit decision on September 13, 1995, wherein the Office found that appellant had failed to submit sufficient evidence to warrant modification of the Office's prior decision terminating her entitlement to compensation benefits. As appellant's July 10, 2002 request for reconsideration was made outside the one-year time limitation, which began the day after September 13, 1995, appellant's request for reconsideration was untimely. Therefore, the Office properly undertook a limited review of the case to determine whether the application for review showed "clear evidence of error" on the part of the Office.⁶

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office. The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error. Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by the Office of how the evidence submitted with the reconsideration request bears on the evidence previously of record

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.607 (1999); *see also* Alan G. Williams, 52 ECAB 180 (2000).

³ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁴ *See Gladys Mercado*, 52 ECAB 255 (2001). Section 10.607(b) provides: "[The Office] will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of [the Office] in its most recent merit decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b) (1999).

⁵ *Veletta C. Coleman*, 48 ECAB 367 (1997); *Larry L. Lilton*, 44 ECAB 243 (1992).

⁶ *Veletta C. Coleman*, *supra* note 5; *Gregory Griffin*, 41 ECAB 243 (1992); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(d) (May 1996).

and whether the new evidence demonstrates clear error on the part of the Office. To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office decision. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office.⁷

Appellant's July 10, 2002 letter stated in its entirety: "I would like to take this opportunity to request a reconsideration of my case as I continue to suffer from job-related injuries sustained at Fort Benning, Georgia on December 20, 1985." Appellant did not present any arguments or submit any new evidence in support of her request.

By letter dated August 6, 2002, the Office responded to appellant's July 10, 2002 letter, and explained the need to clearly state in writing the grounds for her request for reconsideration, and to submit supporting new evidence or legal arguments. No response was received from appellant.

Therefore, the Board finds that the Office's September 27, 2002 decision properly determined that appellant has not presented clear evidence of error, as appellant did not submit any medical or factual evidence sufficient to show that the Office erred in its prior decisions.

The decision of the Office of Workers' Compensation Programs dated September 27, 2002 is hereby affirmed.

Dated, Washington, DC
July 17, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Howard Y. Miyashiro, 51 ECAB 253 (1999).